UNPOPULAR ARGUMENTS:
DEFENDING "ENEMIES OF THE PEOPLE"

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ABSTRACT

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The following paper explores the difficulty of defending an individual whom the listeners fear. I ask: how do defense attorneys argue on behalf of people that jurors believe to be terrorists? In order to answer this large question I focus on a single polarizing case, the Haymarket Trial in 1886, and rely on information from newspapers and pamphlets, trial and pardon transcripts, secondary commentary on the trial, and articles on rhetorical theory. By noting patterns in the appearance and negotiation of various topoi I find that the presence of the jury forces the defense to engage in ideological arguments they might otherwise forgo.

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"Under our system of government the process of adjudication is surrounded by safeguards evolved from centuries of experience. These safeguards are not designed merely to lend formality and decorum to the trial of causes. They are predicated on the assumption that to secure for any controversy a truly informed and dispassionate decision is a difficult thing, requiring for its achievement a special summoning and organization of human effort and the adoption of measures to exclude the biases and pre-judgments that have free play outside the courtroom."

- *Defending the Unpopular Client* by Howard R. Sacks

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INTRODUCTION

In Chicago, the year 1886 is a tumultuous one. Railroad workers go on strike, cause a months-long ruckus that gains international attention, and ultimately give up their endeavor when their bosses refuse to negotiate. I will discuss all of these happenings soon but first I will explain the people and the event that led to the Haymarket Trial, reducing our complex schema of curcumstances to one group on one day: the German Anarchists on May 5, 1886. On this day, the anarchists held a rally in response to police brutality towards strikers. They gave their usual fiery speeches to a crowd of a few hundred of thousand spectators, depeding upon the estimate. As the police marched in to break up the meeting, someone threw a bomb into their midst, killing several officers and creating chaos in the crowd. Despite none of the accused being shown to have thrown the bomb, the speakers at that event as well as some men believed to be associated with them were brought to trial and convicted of murder that same year.

In the many years since the trial, authors have criticized the case made against the Haymarket Anarchists. Some of those criticisms cite a packed jury, an unrestrained prosecution, and an impartial judge. Besides these legal issues, the utter unpopularity of the defendants contributed to the complication of the trial. The anarchists were already notorious in Chicago and beyond for their extreme political beliefs. The fact that they had been accused of killing a police officer only contributed to people's disdain for them. This element of the trial led me to wonder, what rhetorical strategies are available for rhetors like the defense attorneys trying to convince jurors of the innocence of unpopular, even dangerous, people. In other words: How do defense attorneys argue on behalf of people the audience thinks are terrorists?

Unlike many texts on this case, I will not be attempting to determine the true innocence of guilt of the accused in this particular case. While some argue that, "the trial of the Chicago anarchists has been recognized as one of the most unjust in the annals of American jurisprudence" (Avarich xi) and that injustice makes this case interesting, I will not make such an assertion. Instead, I aim to identify rhetorical patterns in the arguments put forth. In doing so, I can answer my question as it relates to this case but also posit an answer to the larger question: how do you get people to care about the rights of defendants they are afraid of?

In the following essay, I will begin by explaining events leading up to the trial in 1886 so that we can proceed with an understanding of the rhetorical constraints limiting the kinds of arguments that the attorneys can make to the jurors. Then, I am going to jump forward in time to 1893 when the new governor of Chicago pardoned the accused. I skip forward in time in order to offer you a point of comparison before getting into the bulk of our analysis. The pardon will illustrate an example of an argument not intended to be presented to jurors, unlike the arguments given in trial. I will then go on to discuss the arguments in trial, beginning with the prosecution and then moving on to the defense. Each section is titled with the name I have given to a particular stasis— meaning the hinge of the argument or question at hand. Those stases are the widening of charges, the question of cowardice, the witness Gilmer, the Law, the American narrative, and the issue of martyrdom.

Overall, what we will end up seeing is that the prosecution tries to maintain the stasis as the evil of the defendants, often calling jurors to answer variations of the question "are they good or bad?" The defense, on the other hand, employs a less consistent strategy and shifts the stasis towards more legal questions at times and then reverts back towards the ideological questions.

BACKGROUND AND RHETORICAL CONSTRAINTS

Considering that I have no intention of writing yet another history of the Haymarket Trial, the coming pages may initially seem out of place. I assure you that my exploration of the historical context of the Haymarket Trial is not merely a digression, but a collection of information integral to understanding the rhetoric of the trial. The historical context creates "rhetorical constraints" that both the prosecution and the defense must work with as they make their arguments.

In this section, I will explain the function of rhetorical constraints and the events leading up to the trial. The components of the context that I will explain are the identity of the accused in relation to Chicago society, the existing contention in society between labor and capital, the mainstream labor union and their relationship to the anarchists, the prevalence of war metaphors in late 19th century American journalism, the influence of the recent Civil War, and the rhetorical impacts of seemingly being at war.

Our current subject-matter, rhetorical constraints, works like an improv game in which players have no choice but to say "yes, and" because you cannot undo what has already been said--you can only add to it. Even if you are arguing in defiance of people's prior understandings, you must somehow build off of or address the rhetoric they have already heard. Obviously, speakers only control what they put forth, not what has come before them. It follows that, "advocates not only try to define the immediate situation but, in many cases, also strive to establish the meaning of previous events that may be related to present circumstances" (Jasinski 518). Thus, the larger historical situation influences the rhetorical analysis of a situation.

Lloyd F. Bitzer coined the term rhetorical constraints and explains "rhetorical discourse comes into existence as a response to a situation, in the same sense that an answer comes in existence

in response to a question" (Jasinski 514). The rhetoric serves as a response not only to another's words but other occurrences as well. Bitzer offers many helpful insights, but our perspectives on rhetorical constraints differ slightly in regard to the possibility of objectivity. He asserts that the situation surrounding rhetoric is "real or genuine" and these circumstances are objective. The reality of the situation, to him, can be revealed completely and accurately because rhetorical constraints are comprised of "publicly observable" factors that we can look at ourselves to see what actually happened. In the following section, I will discuss publically observable constraints such as the Civil War with the understanding that this analysis cannot exhaustively map out the complex historical terrain that our rhetors navigate.

Thus far, I have primarily stressed the importance of understanding the historical situation, but I have offered you no such understanding. In the following, I aim to explain important circumstances surrounding the Haymarket Trail that took place in 1886. I will discuss how larger events like the Civil War and existing class conflict serve as rhetorical constraints.

Considering that the identities of the accused and their unpopularity are central to my question, I should explain the perceived identity of the accused and their role in Chicago leading up to the trial. The defendants were odd men for their time. They were outsiders, foreigners with extreme political beliefs and a desire to drastically change American society. They wrote circulars in German about how the wage system would never serve the interests of the workers and how capitalism would inevitably be abolished. And on one fateful day, they wrote calling workers to arms, asking that they take revenge on the police, those men who had killed their fellow strikers the previous day. These are the words that, according to the prosecution, directly caused the bombing

that killed officer Mathias J. Degan. These words brought 8 men to trial, led all to be found guilty, and left 4 to hang.

More recent authors seem to believe that the Haymarket Anarchists were great guys with the good intentions who were misunderstood by their society. Timothy Messer-Kruse argues that, "Anarchists were pacified and disarmed by New Left historians" (Messer-Kruse 185), speaking of the historians who wrote about this trial again in the 1970's. This may be the case. They could have been mischaracterized as advocates of anti-state violence, but they were certainly not understood as such at the time. The men charged with killing officer Degan spoke and wrote of the merits of violence to achieve political ends. They were idealists, just as the New Left historians put forth, but they were, in fact, idealists who advocated violence and social upheaval. Simply put, the anarchists were incredibly unpopular and understood to be against the American people. This unpopularity garnered more significance amidst the war-like conflict overtaking Chicago.

The Haymarket riot came about at the culmination of The Great Southwest Strike of 1886. These events took place right in the middle of the "Great Upheaval," a time of intense social unrest, particularly between labor and capital (Rondinone 70). This setting granted The Great Southwest Strike a certain epic quality, and some believed it to be the "final adjudication of the relative position which labor and capital are to occupy in this country" (Rondinone 70). As I will discuss at length later on, countless people and publications portrayed the conflict between labor and capital as a war. In these terms, the conflicts of the Great Southwest Strike were the battles that would decide the nationwide industrial war. While this description, in many ways, distorted and distracted from the actual issues at hand, inflammatory journalists cannot be held uniquely responsible for the heightened contention. Tensions were, in fact, from the close of the Civil War until the market crash

in 1929, especially strong due to the fact that the development of industry required massive investments upfront. Only the wealthiest individuals were able to make such investments, so only they were able to reap great rewards from industrialization, making this era an especially capitalistic one. Oftentimes, the interests of workers were sacrificed to those of "capital" even when such arrangements required bending the law (382 Brogan). Rondinone describes popular sentiment about the capitalists, stating, "the public resented the railroad moguls who lived in luxury and openly flouted the laws while millions lived in abject poverty" (Rondinone 44).

The major discrepancy between labor and capital was not a mere exaggeration of the workers. In reality, this epoch favored the wealthiest members of society, and those without capital simply could not compete with their power. Because starting a factory required such a huge initial investment and it took a long time to get a return on that investment, "Only the man whose recourses were large enough to ride out the periodical storms, whether as a lender or as a manufacturer, could be sure of avoiding all the woes of early industrialism… There were few such men in 19th century America and the power of those who did emerge was consequently enormous" (Brogan 382). The capitalists were truly the few and the powerful. While this may seem just as true today, Brogan asserts that this short-lived era was, in fact, more capitalistic. America's, "capitalistic age—the epoch, that is, in which private capital was indeed the dominant force—was conspicuously short, lasting only from the end of the Civil War to 1929" (Brogan 382). Today the power differential between labor and capital was at its height when the Haymarket Trial took place. It was the age in which the word "capitalism" as well as theories decrying this system, namely Marxism, came to be. In Chicago, laborers organized to combat the obvious inequity and abuse of their labor.

One such labor union, the Knights of Labor, organized the particular strike that preceded the incident in Haymarket Square. While the Anarchists later convicted of the strike-related murder were part of a fringe group, the Knights were a more mainstream labor organization, even compared to other unions of their era. Ideologically speaking, "this organization, the largest in America at the time, conceded the existence of a divided society but argued that the social division was reversible" (Rondinone 65). By 1886, at the time of the the Great Southwest Strike, the organization boasted almost a million members. They defined laborers broadly and consequently were able to form a massive coalition of workers of all types. Their ideology also, "extolled the values of military-style honor, waging an ongoing battle with the corporate/capitalist dragon imperiling the land" (Rondinone 65). They explicitly advocated violence in their official published works though they rarely recommended specific acts of violence. Many likely did not believe that they would engage in the kind of warfare that they supported in theory. Their theoretical support of combat allowed them to "tap into the rhetorical reservoir of combat to sell their product to a vast audience" (Rondinone 66) but the fact that they refrained from actual combat likely made them appeal to a wider, more moderate audience as well. I also imagine that their professed hatred of the "corporate dragon" widened their appeal through a form of identification through division, as even if people were not otherwise united, they could find common ground on their shared stance against exploitative capitalism. Their union garnered so much support, "in part because it relied on the popular idiom of war without extending the logic of combat through to coercive action, the Knights garnered a broad base of support without an accompanying centralization of power" (Rondinone 65). Their published works reflect that aim, such as their piece "The Army of the Discontented" written in 1885 (Kogan 3). While today we can reflect back on their actions as a collective and assert that their claims to

violence did not stem from any genuine drive to commit violence since they never resorted to terrorism, we should be skeptical of such claims. They truly did sing with their fellow Knights of how they would "battle for your cause" (Rondinone 65). At the time of such chanting, who could know which calls to violence were genuine and which were not?

I pick at this seemingly minuscule detail because it greatly influences the trial that we will go on to examine. The primary evidence against the Haymarket Anarchists consists in words— a secret code word supposedly published in a German newspaper, incendiary speeches given the night of the bombing, a pamphlet calling workingmen to arms. These pieces of verbal and written works advocating that laborers take violent action against capitalistic interest constituted the majority of the evidence against the Haymarket Anarchists and led to their conviction and hanging. The leaders of the Knights and other groups who played a role in the "labor war" and advocated violence remained unprosecuted.

I do not mean to set up a false equivalency in which the Anarchists and the Knights of Labor appear exactly the same in the degrees to which they supported violence. The Anarchists arguably supported violence more than other groups. Timothy Messer-Kruse notes that the primary difference between socialism and anarchism, the reason for the split between these two ideologies, is their division in relation to the use of violence to political ends (Messer-Kruse 6). Anarchism justifies violence in principle (Messer-Kruse 26). While I could concede those points, I disagree with him about their implication. He seems to think that the knowledge that Anarchists advocated violence should leave us to abandon the possibility of their legal innocence. Of course, I understand these men were not pacifistic, but we cannot mistakenly conclude that warlike rhetoric makes one guilty. If that were the case, then the Knights of Labor leaders would need to be likewise hanged.

The International Anarchist movement, to which the Haymarket Anarchists were certainly tied, not only supported violence in theory but also took part in known terrorist acts abroad. That being said, the fact that members of the decentralized organization of which they were a part did take part in "propaganda by deed" does not make them guilty of murder as individuals. Maybe they did want a war with capital, but so did the Knights, so did a lot of people who were not ultimately convicted of murder. To me, it appears that, based on the movement of which they were a part, these individuals may have been held to different standards of what constitutes illegal speech. If everyone is talking about waging war, then how do we know who really means it?

And, it is no exaggeration to say that most people really were talking about war. The newspapers that I surveyed consistently discuss strikes in terms of war, and Rondinone asserts that, in that era, journalists consistently described industrial strikes in terms of warfare. At first, this point seems uninteresting. Of course, strikes are a kind of conflict so it seems only natural to describe them in generic terms of conflict. However, according to Rondinone, the newspapers' reliance on war narratives does not merely represent a simplistic impulse to reduce events into a more generally understood phenomenon. Instead, this journalistic tendency seriously misconstrues events. You see, "the largest strikes would be viewed as *literal* battles in a much larger conflict" (Rondinone 41). Journalists put stories out presenting strikes as actual wars, not just conflicts that could be described using terms similar to war. By literally equating the Great Southwest Strike to a war, journalists encouraged the sorts of behaviors prominent during wartime. This description appears especially impactful in light of Lakoff's assertion that, most metaphors are partial because, "If it were total, one concept would actually be the other, not merely be understood in terms of it" (Lakoff). In late 19th century newspapers employ the war metaphor totally, informing readers that the strike is literally a

war. Rondinone actually asserts that “strike” and “war” become equivalent terms (63). Rondinone found that the “strike as war” narrative was hardly a rare depiction, as newspapers converged upon it nationwide. People regularly heard of strikes as if they were wars, oftentimes from popular newspapers.

In the following discussion about newspapers I will not merely speculate that jurors had read newspapers, though that would be a sound assumption considering the time period. According to the transcripts offered by Governor Altgeld in his pardon, at least three of the twelve jurors verbally confirmed that they had read newspapers and formed their opinions on the case based on those newspapers. (Altgeld 28) While this would already be a large enough number to warrant consideration of newspapers as a rhetorical constraint, in all likelihood, many more of the jurors read newspapers as well. Furthermore, most had, at the very least, spoken with friends about the trial before jury selection and likely heard the newspaper reports indirectly.

Before I go on to describe the particularities of the war metaphors that newspapers employed, I will explain their importance according to George Lakoff's theory. He asserts that metaphors do not merely convey information about the immediate situation-- they can also reveal underlying models of thinking. Lakoff explains how "we can use metaphorical linguistic expressions to study the nature of metaphorical concepts and to gain an understanding of the metaphorical nature of our activities” (Lakoff and Johnson). Thus, when we look at the war metaphor in journalism as a rhetorical constraint, the basic understanding that people saw the conflict between labor and capital as similar to a war will not do. "Since communication is based on the same conceptual system that we use in thinking and acting, language is an important source of evidence for what that system is like” (Lakoff and Johnson). A lot of people probably really viewed the

situation between labor and capital, as one in which one group would win and the other would lose. We can imagine that such a perspective would, for example, lead people to believe that the parties could not compromise with one another, as war rarely allows for a long-term partial "victory." Other manifestations of the implications of the war metaphor will continually arise. In the following, I will examine the war metaphor more closely in order to reveal underlying modes of thinking about the conflict that attorneys at the Haymarket Trial may have to account for or may have internalized themselves.

While Rondinone does not cite Lakoff, we can see the influences of his work on Rondinone, who explains how each strike was seen as a "battle" or component of a larger war. The war metaphor shaped how the labor "war" unfurled in the public eye. People came to assume a certain coordination between strikers that was simply untrue as, "war framing constantly reinforced the notion that strikers were fully capable of concentrating, mobilizing, and rallying their numbers for the purposes of mass assault" (Rondinone 49). The media depicted strikers as coordinated, capable assailants. Popular journalism depicted violence as falling under "specific, organized logic (the logic of war)… The fact of the matter was that no such organization was possible" (Rondinone 51). We see this misconception arise as the May 5, 1886 issue of the *Chicago Tribune* explains the events at Haymarket Square as, "The barbarian attack upon the McCormick reaper factory Monday afternoon and the assault upon its workingmen were instigated and led by foreign Communists, the followers of Parsons, Spies, and other blatant demagogues who have incited them to violence" ("The Chicago Tribune"). This passage places responsibility on the speakers who supposedly incited the workingmen to violence. Apparently this journalistic tendency applied to other controversial speakers as well, as one very similar Chicago headline reported about, "Jeff Davis Teaching New

Treason" ("The Chicago Herald: Jeff Davis In Savannah") decrying him for, "teaching dogma that led their fathers into rebellion" ("The Chicago Herald: Jeff Davis In Savannah") In this time period, journalists frequently attribute the actions of the masses to their fiery leaders.

The Anarchists are not only depicted as leaders of an army but a foreign army nonetheless as, "these alien Anarchists not only seek to inflame the passions of the mob and urge them to violence, but they have the effrontery to claim that they are 'true American citizens' and that they are defending the liberty for which their sires fought" ("The Chicago Tribune"). The anarchists posed an existential threat to America beyond their threats of violence. Part of the danger described here is their ability to take over regular American men and drive them to violence in the name of false "American" ideals.

We should doubt the reality of these claims. While larger organizations such as "The Knights" certainly bore national influence, the coordination of industrial strikers was nothing like that of military. The anarchists lacked a major following and most certainly lacked the ability to drive men to violence on their behalf. Strikers did not form a larger army and many neither liked nor listened to the anarchists. The operations of the anarchists themselves were often remarkably decentralized and intentionally so. The international organization of which they formed a part put determined that, "each group was to enjoy full discretion in matters of agitation and propaganda" (Avarich 60). In most descriptions of the Haymarket conspiracy, even in that put forth by the prosecution in their case, several German Anarchist cells carry out their own, often uncoordinated, meetings and operations. While untrue, the popular understanding that they were organized reveals the way in which people conceptualized the anarchists' role in the larger conflict. The consequences of this understanding are that, "beginning with the Great Southwest Strike of 1886, strike leadership

came to be held responsible for all strike-related violence. As strikers became troops, leaders would be depicted as having control and authority over them" (Rondinone 61). The metaphor of troops and generals becomes readers' reality as, "the essence of metaphor is understanding and experiencing one kind of thing in terms of another" (Lakoff). This popular portrayal of the relationship between the leaders and the actions of strikers, even if it runs contrary to their legal relationship informs juror's conceptualizations of events and, likely, legal outcomes.

The general war narrative popularized by sensational journalism inhibited readers' ability to analyze the actual events of the strikes. Rondinone writes that, "the narrative of war trumped other possible narratives, and this terrifying plot line obscured any deeper criticism of the system that began the violence in the first place" (Rondinone 4). The type of reasoning furthered by the depiction of two totally opposite groups "makes hard intellectual and practical problems look easy" (Booth 32). Strikers offered specific criticisms of their conditions. For many years even Parsons, one of the men convicted of inciting the Haymarket Riot supposedly, "adjured his listeners to refrain from violence and work for legislative solutions" (Parsons 30). Labor leaders during the Great Southwest Strike likewise sought to achieve reforms. These aims were infrequently discussed, as they ran contrary to the thrilling war narrative. Papers emphasized the impossibility of compromise, offering headlines like "How Will It End? Railroads Determined Not to Yield an Inch" ("The Chicago Herald") and "Will Fight it Out: The Railroads Will Not Arbitrate With Their Men" ("The Chicago Herald") While strikers actively sought out compromise Journalists infrequently reported on their aim desire to reach a compromise and instead focused on capital's hardline stance and the pointlessness of attempting to negotiate. One headline reads, "The Fruitless Conference Between Merchants and Strikers" ("The Chicago Herald"). Their strike would get the workers

nowhere according to the news of the day. Furthermore, papers depicted strikes not as attempts to achieve specific objectives, but as pointless brawls, as evinced by the headline, "The City Terrorized by Gangs of Riotous Strikers" ("The Chicago Tribune") Compromise probably seems less likely in light of recent events.

Such reporting could stem from the recent "total war" on American soil. Americans were too familiar with this recent event. The extreme violence of the war and the encroachment of war upon daily life made war a pressing consideration. For many years people had been describing the conflict between labor and capital as the next Civil War. In an 1877 labor strike, John McAuliffe insisted that, "if the capitalists should open fire on labor's Fort Sumter, he declared, employing the Civil War imagery so popular at the time, the workingmen must 'arm for bloody war!'" (Avarich 29) Bearing in mind that context, we should be shocked when, in trial, the prosecution states that the beginning of the Civil War "was nothing compared with this insidious, infamous plot to ruin our laws and our country secretly and in this cowardly way" (Kogan 22). This shocking statement seems absurdly extreme, but it is not without precedent. Before the trial even begun, "The *Waco Daily Examiner* exclaimed that the Civil War would be mere 'bagatelle' compared with the 'oncoming revolution.' which could "end in the complete destruction of our social fabric'" (Rondinone 75). The idea that class conflict would be worse than the Civil War, while ridiculous in retrospect, appeared to be a real possibility to people around the time of the Haymarket Trial. While it is easy for us to dismiss this idea knowing that it never came to pass, the mere possibility of a divided society fighting another total war likely terrified Americans who had seen the utter horror of such a conflict in their own lifetimes.

Despite the odd depiction of the conflict as connected to the Civil War, it dealt with decidedly new issues as, "railroads, in the post-Civil War years, defined corporate America" (Rondinone 44). At the close of the 19th century, railroad building was a key job sustainer and creator (Brogan 380) Rondinone does not offer an explanation but apparently, "while strikes along the line could be devastating to commerce and livelihoods, they were also quite popular. Compared with the critical reception of distant miners' strikes going on at the same time, urban newspapers responded to railroad strikes with decidedly less animosity" (Rondinone 45). I imagine that this was the case because of the great number of men who worked on the railroads. Most people probably knew a railroad worker personally, so they perhaps could be more sympathetic to their strikes. This information alone would lead us to believe that the Great Southwest Strike was probably portrayed more sympathetically but actually, "with a few minor exceptions, the strike fast proved unpopular in the press… Newspapers depicted this one as based solely on the actions of a single worker and the unbridled arrogance of labor's power" (Rondinone 72). The leaders of this particular strike were understood to be self-serving, using the strike as a vehicle for personal gain. Furthermore, readers came to view the strikers as particularly dangerous since, "newspapers and magazines, startled by a strike that so quickly assumed the properties of a rebellion, printed wild, blood-curdling headlines and clamored for its ruthless suppression" (Avarich 28). Regardless of why, the fact of the matter is that journalists portrayed this strike's leaders as generals of an organized war.

Most likely, people accepted the prevalent metaphor that in the larger labor conflict there were two sides at war. The defense and prosecution at the Haymarket Trial, thus, were left to define the sides of this battle and, more specifically, show jurors on which side the Anarchists fell. Working

within an existing war narrative makes explaining nuance incredibly difficult. Regardless of the reality, this metaphor leads to people seeing only two uncompromising sides.

The laborers were already quite unpopular. While the media usually depicted railroad strikes favorably, the Great Southwest Strike fared exceptionally poorly with the press (Rondinone 45). This strike was of national interest and was written about, usually negatively, nationwide. A single issue of the *New York Times* offered pointed criticism of the strike through the way it described the strikers: "disaffected elements, roughs, hoodlums, rioters, mobs, suspicious-looking individuals, bad characters, thieves, looters, communists, rabble, labor-reform agitators, dangerous class of people, gangs, tramps, drunken section-men, law-breakers, bummers, ruffians, loafers, bullies, vagabonds, cowardly mob, bands of worthless fellows, incendiaries, enemies of society, malcontents, wretched people, loud-mouthed orators, rapscallions, brigands, robber mob, riffraff, terrible fellows, felons, and idiots" (Avarich 28). These negative descriptions come from one newspaper on one day, but countless others were used throughout the course of the strike. According to the papers, people involved were either worthless, dangerous, or both. The Anarchists were more extreme and, consequently, even more disliked than the strikers.

Regardless of the side of the labor conflict on which man saw himself, he would not identify with the anarchists unless he was an anarchist himself. Laborers on strike largely understood the anarchists to be undermining the legitimacy of their movement and so, to many laborers, the anarchists were effectively enemies. Non-laborers on the other hand, understood the anarchists as a more extreme version of their enemies on the side of labor. Regardless of one's stance in regards to the labor movement, anyone who buys into the war narrative and is not an anarchist will view the anarchists as part of the opposition.

The post-war setting and war narrative surrounding this conflict mean that one's status as the enemy bears more significance. In his exploration of biases exacerbated by a war-like mentality, Kahneman highlights a certain type of error that could play a major role in the case we will soon be examining. In situations of conflict, "people are prone to attribute behaviors they observe to personal dispositions, and prone to neglect the influence of situational pressures" (Kahneman and Renshon 83). This bias, called Fundamental Attribution Error would be exacerbated by the conflict situation in which the anarchists were the enemy. The accused were more likely to be viewed as responsible for the attack at Haymarket Square. Already we can see ways in which their unpopularity may affect their trial.

PARDON

Governor John Altgeld did not need to write out a 48-page long document justifying his decision in order to pardon the anarchists. He could make the decision himself without convincing other people that it was correct. Otherwise, he would likely not have been able to pardon the anarchists considering the apparent unpopularity of such a decision. This stance on this one case defined his political career and gained a reputation as "John Pardon Altgeld" (Altgeld 9). Apparently, such an association did not bode well with the majority of Chicago's residents considering that he never won an election again. Altgeld seemed aware that his decision would not be lauded regardless of the justification accompanying it but the fact that he did write such a lengthy paper indicates that he hoped to persuade someone that he was justified in pardoning the anarchists. Like rhetors we will see later on, he emphasizes the importance of justice but, unlike the speakers during the trial, he avoids sweeping ideological claims in favor of more pointed legal criticisms. For the most part, he refuses to show allegiance to one side of the war-like conflict in his city

At this point in time, Americans remained split on the issue of the Haymarket Trial. Altgeld attempts to avoid establishing himself solidly in either camp, as he begins by explaining his disagreement with groups seeking clemency for the convicts. Apparently even the most passionate have not read the actual transcript and, "mostly base their appeal on the ground that, assuming the prisoners to be guilty, they have been punished enough" (Altgeld 11). The reasoning that he takes issue with would rely upon sympathy for the. Sympathy would be an unfounded basis for their release. Altgeld explains how, if these men had truly been proven guilty of murdering a police officer then they should serve out their sentences in full. He defends his pardon not through sympathy for the accused, but on the basis of their botched trial carried out by corrupt officials.

People who decry the trial in 1893 consistently make sure that their listeners know that they are not anarchists. One man whom the bailiff attempted to recruit to the jury by bragging about how the trial would be rigged came forth with that information later on. The introduction to that evidence begins, "The affiant has been very reluctant to make any affidavit in this case, having no sympathy with anarchy nor relationship to or personal interest in the defendants or any of them, and not being a socialist, communist or anarchist; but affiant has an interest as a citizen, in the due administration of the law, and that no injustice shall be done under judicial procedure" (Altgeld 14). In other words, he reveres the law and believes that it should be upheld even when anarchists are given greater leeway through its fair enforcement.

The majority of the critics of the trial follow this model, effectively disavowing anarchism before speaking further. Ames begins her scathing critique of Judge Gary's justifications for his ruling by reminding him that, "you intimate that your critics can only be anarchists or their sympathizers. You are mistaken" (Ames 3). Interestingly, she would likely see herself as an anarchist sympathizer yet even she does not make an argument that anarchism is a public good. Presumably, she sees the persuasive power of appealing to common values rather than the anarchist identity. People are probably not going to change their minds and begin to agree that anarchism benefits Americans or that anarchists are the same as any other American, but people likely can come to believe that the correction of unfair trials benefits all Americans.

Altgeld himself consistently reiterates that his concern lay in upholding the law, not in defending the anarchists as individuals. He explains that, "no matter what the defendants were charged with, they were entitled to a fair trial, and no greater danger could possibly threaten our institutions than to have the courts of justice run wild or give way to popular clamor and when the

trial judge in the case ruled that a relative of one of the men who was killed was a competent juror, and this after the man had candidly stated that he was deeply prejudiced… when in all the instances the trial judge ruled that these men were competent jurors … then the proceedings lost all semblance of a fair trial" (Altgeld 33). Altgeld maintains the same stasis throughout his lengthy argument: the trial was unfair, and that in and of itself contradicts the value system that we all share. He provides an eloquent explanation of this standpoint:

> If the defendants had a fair trial, and nothing has developed since to show that they were not guilty of the crime charged in the indictment, then there ought to be no executive interference, for no punishment under our laws could then be too severe. Government must defend itself; life and property must be protected, and law and order must be maintained murder must be punished and if the defendants are guilty of murder, either committed by their own hands or by someone else acting on their advice, then, if they have had a fair trial, there should be in this case no executive interference. The soil of America is not adapted to the growth of Anarchy. While our institutions are not free from injustice, they are still the best that have yet been devised, and therefore must be maintained (Altgeld 13).

This explanation interests me immensely because he avoids the dramatization that we have seen prevailing in public discussion of the trial thus far. From the newspaper reporting prior to the trial to the strongly worded arguments of Grinnell and Black, the urgency of the situation could not have been more inflated. The simple phrase, "the soil of America is not adapted to the growth of Anarchy" tells us that, whatever happens to these men, anarchy will never truly take root in the United States. Contrary to what we have heard asserted time and time again, the fate of these men will not determine the fate of the world. Our national values are hardy and unthreatened. He adopts a calm tone greatly in contrast with the intense fear mongering and the imagery of a nation devastatingly divided.

Altgeld also manages to hold up American principles without refusing to acknowledge the failings of some who supposedly represent America. While not perfect or perfectly implemented, he

operates under the assumption that American ideals are good. He criticizes Chicago's police force not on the basis that police are inherently destructive to a community, but on the basis that some failed to appropriately carry out their duties surrounding the Haymarket Trial. Unlike most of the speakers that we have read thus far, he dissociates police officers from "the law." His criticisms of police officers apply to them as individuals and do not point to irreparable systemic flaws. He writes, "it is shown that various attempts were made to bring to justice the men who wore the uniform of the law while violating it, but all to no avail" (Altgeld 39). Here, rather than being "the law" the police should be subject to the law. That is an important step to make before explaining police corruption. If police are vessels of the law and they are corrupt then the law itself must be corrupt but if police are merely fallible individuals attempting to implement the law then it would be possible for some to be terribly corrupt and for the system to remain decent and salvageable. Thus, his serious criticisms of Schaack do not point to anarchism, merely police reform.

This balance of criticism of police with respect for the system of policing becomes clearer when Altgeld uses the testimony of the police chief in order to reveal serious corruption within the Chicago police department. According to him, "Capt. Schaack wanted to keep things stirring. He wanted bombs to be found here, there, all around, everywhere. I thought people would lie down and sleep better if they were not afraid that their homes would be blown to pieces any minute" (Altgeld 48). At least in this passage, the police chief seems invested in the public's sense of security whereas Schaack is merely interested in fame. He was motivated by the fact that, "He wanted to…keep himself prominent before the public… After I heard all that, I began to think there was, perhaps, not so much to all this Anarchist business as they claimed, and I believe I was right" (Altgeld 48). The

chief clearly lacks respect for Schaack as he calls him, "this little boy who must have glory or his heart would be broken, wanted none of that policy" (Altgeld 48).

Altgeld, at different points in his argument, disagrees with Supreme Court rulings and relies upon Supreme court rulings, disagrees with police testimony and relies upon police testimony, appeals to the law and questions its application. While some may say that this sort of selection of evidence detracts from his claim, the fact that he applies intense scrutiny to all evidence regardless of its source indicates a thoughtfulness that could increase his credibility. For instance, he directly addresses his selective agreement and disagreement with the Supreme Court, admitting that, "It is true that this case was before the Supreme Court, and that court allowed the verdict to stand; and it is also true that in the opinion of the majority of the court in the Cronin case, an effort is made to distinguish that case from this one; but it is evident that the court did not have the record of this case before it when it tried to make the distinction, and the opinion of the minority of the court in the Cronin case expressly refers to this case as being exactly like that one, so far as relates to the competency of the jurors" (Altgeld 32). He assesses information based on its coherence rather than its source alone. This is another way in which his argument here differs immensely from the majority presented in trial.

Altgeld refuses to entertain any sort of motivism, avoiding the dangerous dogma identified by Wayne C. Booth who writes, "I call motivism a dogma not because I think that all or most value choices are made on the basis of fully conscious and 'scientifically cogent reasoning," but because I find many people assuming, without argument, that *none* of them ever can be" (Booth 25). Altgeld does not assume that people's statements come from them aligning with a particular "side." This strengthens his ability to appeal to outside groups because he is not assuming that anyone who

disagrees with him must be entirely illogical. If everyone is simply rationalizing their own worldview than, "any effort I make to refute it with what I call reasons can be dismissed with the hypothesis itself" (Booth 32). He refuses to validate this logic by applying it to those who disagree with him, instead granting that they have some reasoning beyond pure ideology behind their conclusions. He explains, "The petitioners claim that it was laid down in this case simply because the prosecution, not having discovered the real criminal, would otherwise not have been able to convict anybody; that this course was taken to appease the fury of the public, and that the judgment was allowed to stand for the same reason. I will not discuss this" (Altgeld 35). Besides rejecting motivism here, he also rejects identification with petitioners. While he agrees with the outcome that they advocate he does not do so because of any personal quality of theirs. These tactics would be more conducive to convincing those who disagree with him than using motivism or identification.

Ultimately, he relies upon finding a common ground based in a particular definition of American values. While his argument likely did not convince too many people, considering that his political career was entirely ruined after he issued this decision, he did employ tactics that gave him a chance of appealing not already in agreement with his decision.

Altgeld actively rejects some tactics such as motivism that would foster identification between him and a reader on an ideological basis. In other words, he does not take advantage of prevalent war metaphors that heighten division by placing himself on one side. These tactics, as well as conversations that he had with his associates, indicate that his intended reader would likely not see themselves as part of either side in the conflict in late 19th century Chicago. The fact that he did not need to convince a jury meant that he could appeal to people whose identities were not inextricably

bound to the issues at hand, who had not already taken a side in the polarizing political conflict of the day.

Altgeld may have achieved one of his aims, not because he convinced many people in his day, but because many later historians valorized his actions. Apparently, he told one of his young associates that, "You are younger than I and will live to see my pardon of the anarchists justified" (Altgeld 9). The large body of literature decrying the trial as unjust, while certainly not unanswered by the opposing opinion, illustrates that Altgeld was correct in his prediction that history would come to believe in the justice of his pardon.

PROSECUTION

I have already discussed the rhetorical constraints created by factors outside of the trial, such as the overall style of post-Civil War newspaper coverage and the coverage of the strike preceding the Haymarket tragedy in particular. Factors within the trial create new rhetorical constraints and modify existing ones.

While my overarching questions deal with the arguments presented by the defense, I need to examine the arguments of the prosecution since they limit the arguments available to the defense. Bear in mind that all of the following arguments were put forth in a situation quite different from that of Governor Altgeld who issued the pardon. The rhetors speak in order to convince 12 jurors who have likely been following the Great Southwest Strike all year. The attorneys have a matter of weeks to convince these individuals of their point. This type of rhetorical situation is what I wanted to explore in my initial question: How can you convince jurors of the innocence of accused terrorists? Now, obviously the prosecution will not be attempting the feat of defending accused terrorists, but they are going to be impeding the defense team and, thus, must be considered.

For the following three reasons the arguments put forth by the prosecution provide the most compelling constraints on the arguments that the defense could make. First, while we cannot know which newspapers individuals read before the trial, we do know for a fact that all jurors and attorneys heard the prosecution speak. In that way, these constraints are less speculative than those I identified earlier. Second, we can assume that the prosecutions' arguments intentionally constrain the rhetorical options of the defense as it in their interest to limit the capacities of their opposition. Thirdly, the prosecution is uniquely situated to "frame" events to the jurors because they speak first and determine the questions up for debate. Of course, the defense can and will make adjustments to

their framing but they cannot simply undo what the prosecution has put forth. Thus, the ways in which the prosecution lays out their argument impacts the defense's argumentation immensely.

In this section of the paper, I will pay attention to a few topoi that I identified in the arguments of the prosecution. Topoi are rhetorical clichés of sorts, the phrasings that come up again and again. Going over trial transcripts I identified many such topoi, and in the following I will explain those that I found to be most frequent, interesting, or unexpected. The defense will respond to some of these directly, such as the question of cowardice and the narrowing and widening of the charges. Meanwhile, guardianship of "the law" remains much more prominent in the speeches given by the prosecution. However the defense interacts with the topoi that the prosecution brings up, the fact that they must somehow interact with them remains. Because the prosecution constrains the arguments that the defense can make, we will cover the prosecution before looking at the defense.

Widening of Charges

The prosecution attempts to broaden the charges of the case, probably in order to increase the likelihood that the jury will find the accused guilty of those charges. Throwing out a larger net gives them a better chance of catching their opposition. This tactic appears less helpful as a response to my initial question because it would apply to any legal case. What makes this tactic interesting is that, in this trial, the broadening of charges usually takes the form of saying that anarchy is on trial, and the jurors will decide its fate not only in Chicago, but also worldwide. The prosecution introduces this ideological slant because the jurors view the ideology of the defendants as reprehensible. As I will go on to illustrate, the prosecution depicts the defenses' supposed refusal to engage with these claims as their falsely minimizing the scope of the trial. Thus, even when the

prosecution literally states additional charges, they are not widening the charges, but the defense is minimizing them.

The accused may be charged with killing a man, but they did so by exposing a murderous ideology so, according to the prosecution's line of argument, their anarchism is the crime. Thus, if they can be proved to be anarchists, a fairly easy task considering all of the writing that they left behind, then they can be proved guilty. If the jurors believe that anarchy is bad then they must see the anarchists as similarly bad. If this all reads like a gross oversimplification then, you are reading correctly. If the case were truly that simple then there would have been little controversy since few could argue that the men on trial were not anarchists. So why ask that question?

Many people are incredibly averse to ambiguity. The truth of the events surrounding the Haymarket Tragedy is convoluted, controversial, and confusing. The prosecution does lay out a whole complex conspiracy theory involving a decentralized Chicago-wide anarchist conspiracy to destroy the entire police force in one night that supposedly explains the bomb at Haymarket square. Some people refuse to believe that reality could be so mixed-up, so the prosecution offers an alternative. You can believe the conspiracy theory, or you can simply despise anarchism and believe that this trial will decide the fate of anarchy.

Another possible explanation for the "anarchy on trial" topos is that the prosecution used their platform to political ends. A massive audience heard their closing arguments since the judge allowed for the galleries to be opened to the crowds gathered. These arguments proved to be their most ideological and rambunctious of the trial and were so remarkably impassioned that "the defense cited passages from it to justify its complaint to the Illinois Supreme Court that Grinnell had been

abusive and unjust in his language" (Kogan 56). The prosecution was, for whatever reason, especially zealous and exchanged legal tactics for ideological ones.

The judge attempted to rebuff claims that the massive audience and the impassioned speeches served any extralegal purpose. In his article about the trial published in 1893, he explains that an attorney's wife asked for the galleries to be opened, eliminating any possibility of political motive since the initial request came from a woman (Gary 805). Judge Gary supposedly did not expect any trouble from the masses, but they erupted into raucous applause when Grinnell stated, "no one fears the anarchists" (Lawson 248). They could not locate the source of the applause in the audience, so no one could be held accountable for it but, as critics would later argue, Grinnell and Gary should have been held accountable for allowing such a display to have occurred.

The prosecution frames anarchy as imminently dangerous and the jurors as pivotal in determining its future. "There is one step from republicanism to Anarchy… you are to say whether that step shall be taken" (Kogan 52). While I imagine that being a juror for a murder trial would be a weighty task, the bold assertion that they decide the fate of anarchy increases the significance of their decision. The prosecution reflected newspaper headlines insisting that "great interests were at stake; the law itself was on trial" (Lawson 250).

In that same speech with the boisterous crowd, Grinnell widened the charges more than he had at any other point in the trial. He boldly stated, "Don't try, gentlemen, to shirk the issue. Law is on trial. Anarchy is on trial; the defendants are on trial for treason and murder" (Lawson 250). It is unsurprising that this argument was referenced in the appeal because he blatantly states a falsehood. I have not failed to mention one of the charges for the past twenty pages— the defendants were most

definitely not on trial for treason. Those who "try to shrink" the issue are those who limit the trial to that which it is actually about. By Grinnell's reasoning, whoever attempts to adhere to the charges is somehow impeding an investigation of treason.

Sarat argues "the disruption of crime leads to the discursive reenactment of order through language" (Sarat 18). In other words, crime often forces us to confront chaos, and law comes in to reinforce order. By this same thinking, disorderly law is not much different discursively than crime, and the defense attorney, Black, must cause a disturbance in order to adequately respond to Grinnell's obvious overstep. Grinnell's assertion forces Black to disrupt and correct Grinnell's speech. Black interjects, "The indictment does not charge treason; does it, Mr. Grinnell." To which Grinnell replies "No, sir…" (Lawson 250) before continuing his speech. While necessary, Black's intervention only confirms Grinnell's assertion that others are going to try to erroneously limit the scope of the trial. He set himself up to make a prediction that would be immediately confirmed, bolstering his legitimacy. Furthermore, creating this contentious interplay highlights their oppositional aims and fuels the war metaphor prevalent in this trial.

The prosecution also broadens the type of evidence that could be brought forth against the accused. They strung together a narrative by connecting the patchwork of contradictory testimony. Not only did the testimony of the anarchists often contradict police but also the testimony of police would contradict the sworn testimony of other police. Even if someone wanted to believe one "side" of the testimony then they would be forced to confront the fact that gaps remained. In order to address the defense's claim that there were gaps in the narrative the prosecution states, "it is not really a "chain of evidence." If a chain breaks in one of its links, the whole chain goes. That is not true of the strength of the proof in any case. It is represented better by a cable than by a chain of

evidence" (Lawson 177). He goes on to explain how this case is more like a suspension bridge held up by many cables so that if one cable snaps the whole bridge will not fall down. Perhaps a single "reasonable doubt" would not, in fact, destroy the possibility of a guilty verdict. Under these constraints, the defense not only must weaken the links in the narrative chain—they have to dismantle it entirely.

The Question of Cowardice

The defense and the prosecution both address this topos of cowardice, devoting time to proving the accused to be either manly or cowardly. This effort struck me as strange because it has little to do with the legal case at hand. As you will see, the attorneys frequently frame this question as if the answer will offer insight into the guilt or innocence of the accused. Even if we could definitively answer whether or not the defendants were cowards that would not lead us any closer to determining whether or not they were the inspiration behind the bomb that struck the police. Considering that, as someone with great distance from the trial, these arguments appear irrelevant they likely relate to the context. Clearly they were intended to resonate with the audience in a way that they cannot with me.

The historical context at the time of the trial creates a situation in which determining whether or not a man is a coward matters in a way it does not today. While a much smaller percentage of the population will be directly affected by war today, many of the individuals involved in the trial directly participated in the recent Civil War, either by witnessing the destruction that it caused or fighting to maintain the Union. Today, someone can be a coward and be seen as good. A coward can sit behind a desk and be nice and do good work. In the 19th century a coward was the kind of man who deserted his comrades on the frontlines, who evaded conflict to the detriment of

his community, and who left his family defenseless. Cowardice bears real implications in wartime so answering the question of cowardice likely did matter to jurors.

In fact, it probably resonated with Americans more than questions regarding the mundane details of meetings preceding the Haymarket conspiracy. The question of cowardice would be immediately accessible to jurors of any level of education, unlike legal questions. These types of questions deal more with action: Who stood and fought and who ran off? The bounds of this question would be a familiar set of parameters. Assessing the testimony in this way allows jurors to employ the same judgments that we would have applied when fighting during the Civil War.

So the prosecution's engagement with these kinds of questions is not so strange after all. If they aim to assert that the accused are bad men damaging society, then it would help for them to be able to convince the jurors that the anarchists are cowards since, at this time, cowardice is a social evil. While this portrayal may seem to undermine the prosecution's narrative of the anarchists being controlling leaders who caused someone else to lash out violently, as I will discuss, it probably also makes the accused look even more deplorable in the eyes of the jurors. If the accused are cowards then they are even more culpable if they didn't directly throw the bombs because they are both murderers by inciting the violence and cowards for not directly participating in he battle.

In the following I will discuss the way in which the prosecution lays out the topos of cowardice, beginning with the theoretical underpinnings of their arguments and then looking at the arguments themselves. I will also explain how their statements fit into the overall narrative they have explained.

First off, it will be helpful to understand the rhetorical concept, dissociation, before moving forward with my analysis. The authors Perelman and Olbrechts-Tyteca employed this word,

"dissociation," to explain a certain way of negotiating tensions, contradictions, or apparent incompatibilities (Jasinski 175) Dissociation comes up when someone takes a thought process centering around some binary and maintains the binary structure while shuffling around the values we associate with each component. The rhetor manipulates a given binary so that the side typically considered to be bad becomes circumstantially good. This idea is easier to understand in practice. Typically dissociation takes the form of insisting that "appearances" differ from "reality" as the prosecution does when they describe an anarchist as a man who, "desires to pose as a leader, although in fact a coward" (Lawson 28). Here the rhetor engages in dissociation. Typically our heroes are the ones who command followings, who serve as effective leaders, yet here we have leaders who are not heroes at all but their opposite. They represent a cowardly perversion of leadership. They are the worst of the cowards since they also try to deceive people. The selfishness of the accused results in their leading from a safe distance, a disposition that supports the theory that they caused this tragedy indirectly.

The prosecution brings up the topos of cowardice early on, saying, "Gentlemen, leaders of any great cause are either heroes or cowards" (Lawson 27). They lay out the binary, our two mutually exclusive and collectively exhaustive categories. After laying out the binary, the prosecution shuts down any remaining ambiguity by quickly informing us to which group the anarchists belong. "The testimony in this case will show that August Spies, Parsons, Schwab and Neebe are the biggest cowards that I have ever seen in the course of my life" (Lawson 27). I would have expected that the prosecution would insist that they aimed to show a defendant's *guilt,* even if they insinuated some character flaws in the process. Apparently their arguments and evidence function to illustrate *cowardice*, a personal characteristic that cannot be empirically proved or disproved anyway. It would

be odd enough for the prosecution to make this kind of assertion once, but they do so continually, reiterating, "gentlemen, I have called several of these men cowards. The testimony will show that they are" (Lawson 41). In this way, and in many less direct ways, the topos of cowardliness introduces a line of thinking more about the identity of the men on trial than what happened in Haymarket square.

This probably made sense to jurors considering that even outside of the trial the accused were depicted as men who would appear to be interested in a larger cause actually only worried about themselvs. Supposedly, "they said to one another 'Why should we attack and lose our own lives for the sake of others?'" (Schaack 254) They are leaders in that they will pressure others to act in furtherance of their views and yet they entirely lack regard for their followers. They are cowards who, "have advised the use of dynamite and have advised the destruction of property for months and years in the city of Chicago" (Lawson 27) yet do not care about the wellbeing of the people of that city. We must note that this condemnation of cowardly violence does not stem from a shaming of violence more generally. To the contrary, the prosecution valorizes certain kinds of violence, even when committed by the men whom they are prosecuting.

Supposedly, directly starting a violent conflict is not that terrible but starting a war slyly is despicable. The prosecution states, "The firing upon Fort Sumter was a terrible thing to our country, but it was open warfare. I think it was nothing compared with this insidious, infamous plot to ruin our laws and our country secretly and in this cowardly way" (Lawson 29). In this schema, fighting can be respectable regardless of your position, but cowering away cannot be anything but contemptuous. Later on we will see other instances in which the Civil War explaining how this conflict was of the sort that strengthened the US whereas the type of unrest sparked by the

Anarchists could only lead our nation to ruin. These points all confirm that violence is not the problem that the prosecution points out, though the accused are charged with murder, but instead their criminal cowardice.

This fact appears most clearly when the prosecution lauds Fielden's rumored bravery as he stood his ground in front of the police and he, "stepped from the wagon and began firing" (Lawson 43). Instead of using this story as evidence of Filden's brutishness, the prosecutor uses it as an opportunity to criticize the others for failing to emulate Fielden. According to him, the "others fled, Parsons never did a manly thing in his life, and neither did the others. They are not for law; they are against the law" (Lawson 43). If the mere fact of being against the law is the issue, then why hold up the man who shot at police? Clearly there must be other factors at play here. The prosecutor reconciles this dissonance soon after, "Although Fielden is against the law, he did have the English stubbornness to stand up there and shoot, and he fired from over the wagon until finally he disappeared" (Lawson 43). We begin to hear an unexpected acknowledgement of nuance from the same man who minutes earlier told us that there are only heroes and cowards and he would tell us who was who. Apparently Fielden, "is the only one, I told you, of the crowd, that has got any of the elements of the hero in him; he was willing to stand his ground" (Lawson 43). Fielden is an impossible individual, a hero who is in the wrong. This instance of appearance vs. reality offers insight into the prosecution's repetitive use of dissociation

Another common argument closely tied to dissociative claims "proving" cowardice relates to anarchists treatment of women. According to their opposition, they may seen to be inclusive but their inclusion of women is merely another manifestation of their true cowardice. Schaack equates cowardliness with giving women a role as, "One big, loud-mouthed fellow, evidently a coward,

shouted: ‘My wife will do that. She is an Anarchist as good as any one of us'” (Schaack 366). This man is a coward for allowing his wife to engage in revolutionary activities. Schaack reasserts that point continuing, “many of these men were just cowardly enough to thrust their wives forward where danger lurked” (Schaack 367). Supposedly police officer Bonfield who spearheaded the march on Haymarket square that evening stated that, "the trouble with these socialists (or strikers) is that they always have their women and children with 'em, and we can't get at 'em. I'd like to get about three thousand of 'em together in a crowd without the women and children, and I'll make short work of 'em” (Ames 8). According to these accounts, the anarchists use women to carry out dangerous tasks and, perhaps inadvertently, use women and children as human shields. Womanliness highlights the cowardice of the anarchists.

The Witness Gilmer

Depictions of violent American masculinity come into play during the debate surrounding the testimony of Harry L. Gilmer. These descriptions appear more significant in light of the argument that, “the invective against treason always looks for more than crime. It partakes of an American civil religion where crimes against community are also sins against humanity and where the ritual of courtroom reinforces a national faith” (Sarat 133). In other words, as we charge an individual with behaving contrary to our nation, we end up defining the ideology of our nation. The arguments presented in the Haymarket Trial confirm Sarat’s supposition, as the ideological comes up as much if not more than the legal. While many would argue that America is a nation of immigrants, the treatment of Gilmer and those who challenge him in trial points to another understanding of the nation.

Gilmer's testimony completes the prosecution's narrative about the Haymarket conspiracy, as he directly links the accused to the crime. Thus, it comes as no surprise that the defense refutes the legitimacy of his testimony—that's part of an attorney's job. The prosecutor, also doing his job, tried to delegitimize these "attacks" by explaining that, "they wanted to settle this case by making an attack upon Harry Gilmer, *the veteran soldier*, whose, good character had been proved by reputable citizens in all walks of life" (Lawson 157). While the mere fact that he disputes the attempts to impeach Gilmer is unremarkable, the way in which he does so indicates more than his position within the trial. Here, he depicts the defense team as personally attacking Gilmer, which they do, but the fact that they do so with words alone matters. By framing the defense as attacking an American soldier, not just any random guy, they situate the defense in opposition to those who defend America. To question Gilmer as a witness becomes the same as it would be to question the US Army, the US itself.

The prosecution expands upon this depiction of Gilmer as the bastion of American-ness and his opposition as inherently anti-American. Those who questioned him were "*not one of them an American citizen or a naturalized citizen*, none of them in this country but two or three years. These were the men who were called out to disqualify Harry Gilmer, *the old soldier, and they asked the jury to discredit this man who had defended law and order under the American flag. The witnesses belonged to the revolution*" (Lawson 159). He conjures up the image of an American soldier vs. a foreign enemy. A "revolutionary" can, apparently, make no objection to his treatment by an American in a court of law. That is, at least, the implication of such lines of argument.

I cannot explain much of the argument put forth by the prosecution in defense of Gilmer's integral testimony because it does not exist. They make statements like, "an attempt was made to

impeach Gilmer, but he told the truth, and the jury believed him" (Lawson 163). They acknowledge the conflict but depict it as an invention of the defense. They seem to say that the case was all very simple until the defense began to meddle with the witnesses. Rather than fortifying Gilmer's testimony by providing further evidence in support of his claims, the prosecution simply wills the jurors to believe Gilmer. They acknowledge the controversy and yet never truly address it from an evidence-based standpoint. "a number of witnesses…had sworn that Spies was not on the wagon after Fielden had commenced to speak. There could be no doubt, however, that Gilmer had told the truth, and that Spies went into the alley just when the witness said he did, before the bomb was thrown" (Lawson 164). The phrase "there could be no doubt" sounds particularly odd immediately after pointing out contradictory testimony. It seems that there should, in fact, be doubt if the jurors are to weigh all of the information presented. Still, the prosecution depicts any juror's doubts about Gilmer as either non-existent, as illustrated above, or as absurd.

The prosecution mocks the consideration of Gilmer's testimony, sarcastically asking, "'Will one be enough?' Did Gilmer tell the truth? No, the word of the revolutionist was the stronger" (Lawson 163). Here, the accuracy of testimony seems entirely dependent upon the identity of the person speaking. Recall that Altgeld actively rejects this tactic, which I have referred to as motivism, in which the identity of the speaker eclipses the logic of their statement.

The implication that an American soldier's word cannot be impeached in a court of law should be troubling regardless of whether or not Gilmer told the truth. If non-Americans cannot offer valid testimony against Americans then how are they to have any legal recourse? As you will see though, the defense does not put forth that argument at all. As we will see, the defense frequently engages in motivism as well, indicating that this choice of tactic may not be a characteristic of the

prosecution so much as a trait of arguments being made to a jury. Rhetors must engage more with issues of identity when arguing before people who feel personally connected to the identities at play

The Law

This topos is the only one without a corresponding argument put forth by the defense. Obviously both sides talk about the importance of the law while speaking in a court of law but oftentimes when the prosecution brings up the law they speak of an ideological version of the law that is under attack. This seems to be a justification of the legal violence that the prosecution aims to perpetuate by depicting the conviction and hanging of the anarchists as a form of self-defense on the part of the law.

During the Civil War: "State violence was rationalized on both sides of the North-South divide. The command to serve humanity was severed from the command to return good for evil, to make peace rather than speak evil, to reconcile instead of succumbing to war" (Ivie 40). While the state may be protected through violence, Ivie argues that humanity cannot be protected when such violence reigns unhindered. Likely, Americans were somewhat aware of this reality after the bloodshed of the Civil War. If nothing else, they likely sought stability amidst the uncertainty of massive labor strikes and general unrest that, according to many newspapers, threatened to break out into all-out war any day. As violence looms, "in capital trials, law seeks to distinguish the killings that it opposes and avenges from the force that expresses its opposition and through which its avenging work is done" (Sarat 142). The prosecution must rationalize how the furtherance of violence is justifiable and pursuant of further stability rather than the cycle of chaos that Ivie sees as coming from continued violence. They do so by depicting the law itself as under attack so that the killing becomes necessary in the name of self-defense.

This framing indirectly addresses how, "the proximity of law to, and its dependence on, violence raises a nagging question and a persistent doubt about whether law can ever be more than violence or whether law's violence is truly different from and preferable to what lurks beyond its boundaries" (Sarat 137). If the accused are charged with violence in furtherance of their political aims then are those who kill them in order to protect their own political ideals truly different from those they condemn to death?

Their attacking the law first differentiates these violent actions, as the law is merely defending itself against a violent aggressor. "The bomb which struck [Degan] to his death was aimed at the law of the State of Illinois, and so it happens that in attempting to punish these men for their offense the law of this State attempts to vindicate itself" (Lawson 175). Here, the prosecution directly addresses the concern that Sarat brings up. The violence that the court will go on to mandate will supposedly vindicate the vulnerable law. The prosecution continues, "the great question which you are to answer by your verdict is whether the law of the State of Illinois is strong enough to protect itself, or whether it must be trampled to the ground at the dictate of half a dozen men, only one of whom was born on our shores, and, so far as we know, not one of the others is a citizen here" (Lawson 175). The question of shameful cowardice as opposed to violent manliness, as discussed at length in another section, comes up yet again. To fail to hang these "foreign" men would be to illustrate that the laws of our nation are weak, unprepared to defend themselves against violence.

It may seem difficult to imagine the law as under attack, considering that it is no corporeal or even physical entity. The judge, reflecting on the trial in 1893, employs incredibly visceral imagery in order to depict the defendants as physically attacking the law. Apparently, "Fielden was telling the

crowd to *throttle, kill, stab the law*, I have shown. It was the report, brought by a detective to the police station, of this part of Fielden's speech that started Bonfield, with the police under his command" (Gary 835). He draws out the correlation exactly: Fileden attacked the law and it reacted in self-defense. Gary repeats this same wording again saying that the anarchists encouraged their co-conspirators, "if they loved their wives and children they should *take the law, kill it, stab it, throttle it, or it would throttle them*" (Gary 835). They sound as if they are in a wrestling match with "the law."

The judge is not the only one to put forth this image, as the prosecution portrays such a struggle frequently in trial. In one instance, they state that, "in that temple all men meet upon a footing of absolute equality, even though, the criminal blow was armed at the very source of the law itself" (Lawson 154). Later on they repeat, "the foundation stone of the great public edifice of justice has been attacked. Shall it stand erect?" (Lawson 165) Here, they remain somewhat more reserved than the judge in their claims, stating not that the law itself was violently attacked, but rather that the foundation of the law, the police.

This depiction portrays the police as infallible vessels of the law such that they cannot be criticized for their individual and collective failings. They are *the Law* and the anarchists are antithetical to them. This makes any discussion of actual individual behavior, which is supposedly the basis for determining the legality of actions, difficult. The prosecution consistently repeats that the anarchists "are not for law; they are against the law" (Lawson 43). Today we hear this phrase criticized, with many asserting that actions can be against the law but not people. This apt criticism, while not directly offered by the defense team, certainly applies to this case over a century ago.

The prosecution also implicitly puts forth that those outside of the law do not deserve the protections, which, in theory, the law affords all. Even when the prosecution asserts that they will

give the defendants a fair trial, it is framed in such a way that they make clear the defendants do not deserve such fairness. Rather than their obligation it becomes a kind-of charity to try these men according to the laws of the nation. “The counsel for the defense in this case, who receive every privilege to speak under the letter of the law, sanctified by the public institutions of our country, will invoke, in the name of each of these defendants, even though their object was the total annihilation of the law…” (Lawson 155) Consistently, when the prosecution reminds the jurors that the defendants will receive a fair trail, they insinuate that they do not deserve one. After this trial, “no opportunity shall be left to say that there is not a fair trial in the State of Illinois, even of men whose end and aim is the overthrow of all law” (Lawson 155). The prosecution constitutes itself as the side of the law, saying, "I am here, gentlemen, to maintain the law, not to break it; and, however you may believe that any of these men have broken the law through their notions of Anarchy, try them on the facts” (Lawson 25).

With the number of times that this formulation occurs, we cannot overlook it as a mere coincidence. It allows for jurors to find common ground, or consubstantiability, with the prosecution. “Consubstantiability represents an area of ‘overlap’— either real or perceived— between two individuals or between an individual and a group; it is a basis for common motives and for ‘acting together’” (Cheney 146). They are on the same side, the side of the law. Furthermore, this construction highlights that the defendants are benefiting from a process of which they are unworthy. They might have a chance at justice, but they do not deserve it. In this light, the trial itself becomes a kind of mercy-driven formality; a parade of American “fairness” but underlying such assertions is an unfair presumption of guilt rather than innocence. To say that these men do not deserve a trial, even if they are getting one, is to say that they are beneath the law.

As the prosecution has already established that the jurors are assumed to be on the side of the law, an attack on the law not only creates chaos that must be calmed but also is an attack on juros as individuals. As Cheney puts it, when an organization with which someone identifies is said to be under attack, "identification with the frightened 'victim' is implicit" (Cheney 153). People who see themselves on the side of the law will see themselves as victims of any group that is against the law itself. Thus, finding a guilty verdict becomes self-defense on the law's part and also on the juror's part and helps to resolve and qualms stemming from the difficulty that, "because in capital punishment the action or deed is extreme and irrevocable, there is pressure placed on the word— the interpretation that establishes the legal justification for the act" (Sarat 141). The fact that the defendants have already supposedly received more mercy than they are owed makes the complex decision seem simpler.

The American Narrative

Both the prosecution and the defense give lengthy explanations of America's history. These stories matter as they provide the setting for the events discussed and the case itself. Considering that "facts are inherently ambiguous in the absence of story context" (Bennett 323) these histories offer insight into a way that which we, and presumably the jurors, could view the facts presented to us. Note that these histories were provided following the presentation of the evidence and before the jurors were sent to deliberate so they likely were intended to influence how they went on to reflect on that which has already been presented.

The prosecution began by letting us know how the trial relates to the history we are about to hear, "you have been told, gentlemen, and you were correctly told, that we are making history. My fear is, further than that, that we may here be unmaking history. Let us take no step backward"

(Lawson 240). The image of avoiding a step backward does convey conservatism without backwardness. We are to remain firmly seated in the history that has been passed down to us, not alter it in any way. Thus, the precedent set by our forefathers is that which we should follow.

After explaining the importance of government and lauding the steps towards freedom that the United States has taken, he goes on to talk about the history of immigration in the US, a relevant subject considering that the majority of the defendants are immigrants. "A little over a hundred years ago there came, to the shores of America men driven here because of oppression abroad. Oppression continued, and the revolution of 1776 was born. Our soil from that day to this has been the place where people from all climes and all countries came for the freedom they sought in vain elsewhere" (Lawson 240). It sounds, at this point like everyone is welcome so long as they believe in freedom, our shared value. Apparently it is that same freedom "which induced these defendants to come here also" (Lawson 240). So for the briefest moment it sounds like the defendants may share this all-important value. Soon, we come to find that they do not share this value so much as they plan to take advantage of it.

The defendants have perverted the freedom that defines Americans and thus deserve to be turned away. Using "we" to describe himself and the defendants, "we Americans who adopt this country as our own have the right to criticize the nationality of the defendants" that nationality clearly being other than American. They have this right, "because, if a man come here in this, our country, and becomes a part of it, it is his; but when a man seeks these shores only for anarchy, only for communism, only for selfish ends and desires, he is no part nor parcel of this country" (Lawson 240). Basically, you can come to America if you do not want to change it. Clearly it is assumed that people are either unfamiliar with the content of communism and anarchism or do not believe that

these ideologies could be genuine because, in theory, both seek a sort of social equality that would be difficult to deem selfish, especially in contrast to capitalism.

Supposedly anyone with these political aims, "does not belong here, and… should go back" (Lawson 240). Note that these are the same people who he reported came to America precisely because they had such freedom in vain elsewhere. Yet by refusing them a place here we are upholding our American values. The prosecution asserts, "let us take no step backward. The revolution established freedom and America" (Lawson 240). In other words, a group of political dissidents established their own government that established political freedom. By allowing these new political dissidents to remain in our country we remove values of the initial revolution.

The accused's rebellion against America is far more damaging than the rebellion of the confederacy from which America exited, "glorified as a nation, strong in power, solid, substantial; a nation which had the dignity of its own power and, further, the respect of every nation in the world" (Lawson 240). Yet the foreign menace of anarchy cannot garner such respect as it is "against the law, against the life of law" (Lawson 240).

The "freedom" that this version of American history allows immigrants is the freedom to conform, the freedom to "become a part of it." The freedom to dissent, apparently, only exists for those like the confederates who already established their place in the United States. On the other hand, new immigrants who hope to exercise such freedom do not deserve a place in our nation.

The Issue of Martyrdom

The issue of martyrdom is closely tied to the question of American values that I have just discussed. Attorneys address what it means to be an American and also who we, as Americans, admire most. The prosecution frames this martyrdom as relevant to the innocence or guilt of the accused by insinuating that the defense team aims to praise the beliefs of the anarchists when they assert the accused's legal innocence.

I noticed this topos, not because it occurs so frequently, but because of its interesting phrasing and the unique ways that the defense and prosecution explain martyrdom. The prosecution consistently brings up that Mr. Black wants the jurors to hang garlands around the necks of the defendants. Sarcastically, they say, "why, gentlemen, let us walk out of this courtroom here now and surround these men with garlands of flowers and sing paeans of praise to their glory because they are Anarchists" (Lawson 239). And again soon after, "according to Mr. Black, we should 'wreathe garlands for them'" (Lawson 240). I assumed that this phrase had come from earlier in the trial, since it is such a specific phrasing and they attribute it to Mr. Black. Nevertheless, I was unable to locate this exact wording anywhere but in the prosecution's arguments. This absence leads me to wonder if the prosecution has condensed some of Black's perceived sympathy with the defendants into a more poignant symbol.

The implication of this "garlands" phrase is that the mission of the defense team is to publicly praise the accused and the ideals that they stand for. It conjures the absurd image of previously unconverted Americans pouring out into the streets to praise the anarchists and threatens an inversion of their current unpopularity. If this is what the defense really wants, then by acquitting

the defendants of these charges the jurors would effectively laud anarchy for all Chicagoans to see. The defense, as far as I could tell, never made such a claim and likely would not make such a claim because it would raise the threshold for the justification of a not-guilty verdict. In order to deliver such a verdict a juror not only would have to believe that the men are innocent, but that they are also praiseworthy. This makes the job of the defense much more challenging.

According to the prosecution, the real martyrs at Haymarket square were the police officers who died in there. "The flowers of spring shall bloom upon their graves, moistened by the tears of a great city. Outraged and violated law shall be redeemed, and in their martyrdom anarchy shall be buried forever" (Lawson 165). With this model of martyrdom, to deem the defendants not guilty would be to dismiss the sacrifices of police officers, the brave martyrs to American Republicanism. This, in contrast with their enemies the anarchists about whom the defense supposedly, "have compared these men to the father of our country. They compare them to martyrs" (Lawson 239). By calling the anarchists martyrs, they insult the real martyrs to our nation.

By this logic, to determine the accused to be legally innocent of the charge of murder would be to devalue the sacrifice of police officers and to laud the anarchists as true heroes of Chicago. Presumably if a juror were to believe that this is really what Mr. Black said, they would remain unconvinced.

DEFENSE

In trial, the defense usually spoke after the prosecution so they often had to respond to the points brought up by the prosecution. When the prosecution went off on ideological tangents of little relevance to the case, the defense followed to some extent. For this reason, possibly among others, the defense employed a wider variety of tactics. I anticipated that they would call out the more questionable tactics of the prosecution, highlighting their reliance upon issues of identity more so than legal matters, but the defense does not. In fact, they launch their own arguments based in motivism. They are the ones who began to ask whether or not Gilmer, the army veteran, was a liar and enemy of the people.

Though the defense team opts for a more conservative overall strategy to distinguish themselves from their clients who are using the trial as a political platform, their strategy hardly remains constant. The defense makes typical legal arguments, follows the ideological lines of argument drawn out by the prosecution, and also introduces identity-based arguments themselves.

The defense does offer the first lengthy narrative of American history in the trial and sparks the debate surrounding Gilmer's character. The other topoi that I will discuss were all brought up first by the prosecution. Those topoi include the narrowing of charges, the question of cowardice, and the issue of martyrdom. Combing through all of these topoi we can see that the defense engaged with identity in a way that Altgeld did not. This decision influences my upcoming conclusion.

Narrowing of Charges

The defenses' narrowing of the charges takes place on two fronts. First, they attempt to downplay the ideological component of the trial. They devote much time towards this effort, since the prosecution consistently brings up the controversial ideology with which the accused are

associated. Second, the defense defines an accessory to a crime more narrowly so that the accused could not fit that definition.

In downplaying the ideological implications of the trial, the defense employs two tactics: explaining the impossibility of this trail seriously impacting the trajectory of anarchism, and insisting that the men be convicted of a particular charge and not persecuted for their beliefs alone.

According to the defense, whether or not the jurors would like to end anarchy once and for all, they cannot do so by hanging these men. They repeat this point in a variety of ways, "As Mr. Grinnell said, he wanted to hang Socialism and Anarchy; but twelve men nor twelve thousand can stamp out Anarchy nor root out Socialism" (Kogan 36). Such ideas cannot merely be rooted out since they, "lie within the heart and within the head" (Kogan 36). The jurors cannot shift the worldviews of others. This explanation serves as a response to the prosecution's claims that anarchy is on trial.

The defense expands upon this point, saying that not only are jurors unable to sway opinions on anarchism, but also that the anarchists are likewise powerless. Mr. Salomon of the defense team asserts that, "they had the right to gain converts, to make Anarchists and Socialists, but whether Socialism or Anarchy shall ever be established never rested with these defendants, never rested in a can of dynamite or in a dynamite bomb" (Schaack 480). He further downplays the possibility of forced ideological spread, addressing rampant accusations in newspapers that the anarchists were going to, "force their doctrines down the throats of American citizens, even if blood had to be spilled" (Lawson 180). Based on the model presented by the defense, whether the anarchists wanted to do that or not, it would remain impossible. Again, "it is neither the place nor the time for counsel in this case, nor of the gentleman of the jury, to either excuse acts of these defendants nor encourage

them" (Kogan 36). The case need not be decided on ideological grounds. More directly, they remind jurors that their political aims cannot be the sole basis for their guilt, "they are not charged with Anarchy; they are not charged with Socialism; they are not charged with the fact that Anarchy and Socialism is dangerous or beneficial to the community" (Kogan 35). Here the defense combines the importance of specific charges along with the aforementioned relative powerlessness of jurors to impact Americans' ideologies. This belief may have carried more weight with the jurors since only a "larger, juster, truer" idea will get rid of anarchy, not smashing it (Boudreau 84).

Even if ideology were more relevant to the overall story of the accused, ideologically based accusations do not actually relate to the particular charges against them. The defense reminds jurors that, "a charge against them specific in its nature must be made against them" (Kogan 35). They continually issue such reminders that, "If a man be guilty of conspiracy, or if he be guilty of treason, he is liable to punishment for that offense, and not for a higher one" (Lawson 126). More to the point: "our object is simply to show that these defendants are not guilty of the murder of which they are charged in this indictment" (Kogan 36). The defense furthers this point by offering a variety of definitions of an accessory to a crime that the defendants do not align with, aiming to lead jurors to the conclusion that the accused are not, in fact, accessories to murder.

Since, based on the writings of several of the men, they appear to support general violence and bomb throwing to political ends, the defense end up homing in on the importance of *the* bomb and *the* murder and not bombs or murders generally. For those concerned about their promotion of violence, presumably thinking that speech that heinous has to violate some law the defense asks, "Is there no law to which these people can be subjected and punished if they do this thing? There is, gentlemen, but it is not and never has been murder" (Lawson 126), thus they might not be innocent

guys but they can still be innocent of murder. Likewise, they may support the use of bombs but they did not support the throwing of this particular bomb. This argument has a great potential utility to the defense considering that the prosecution fails to present any evidence that the men on trial threw the bomb themselves.

They frame the question of guilt or innocence considering that, "The law says, no matter whether these defendants advised generally the use of dynamite in the purpose which they claimed to carry out, and sought to carry out, yet if none of these defendants advised the throwing of that bomb at the Haymarket, they cannot be held responsible for the action of others at other times and other places" (Lawson 126). Later on, the defense pushes this point even further stating that, "The sole question before the jury was who, threw the bomb, for the doctrine of accessory before the fact, under which it was sought to hold defendants, was nothing but the application to the criminal law of the civil or common law doctrine that what a man does by another he does him- self" (Lawson 226). The main question, the stasis, is who threw the bomb. When the defense made this assertion, all of the evidence had already been presented and the prosecution clearly could not indicate who threw the bomb. Thus, by setting the stasis as such the defense deems the prosecution's "proof" entirely insufficient. In short, "The State must show that the agent of the defendants did the deed, and it is not sufficient to show that the defendants favored such deeds" (Lawson 226). And the prosecution, based on their own admission, did not meet that standard.

Later criticisms of the case written on behalf of the defendants put forth a similar thought that, "There is no evidence that he knew of any preparation to do the specific act of throwing the bomb that killed Degan" (Ames 12). People outside of the defense team, thus, deemed this tactic potentially convincing as well.

The Question of Cowardice:

If I were to argue against the prosecution in relation to the cowardly vs. manly topos, I would point out how irrelevant this factor is to the innocence or guilt of the defendants. Else, I would agree that the accused are cowards and cowards rarely push mobs to violence. The defense makes neither of these points as they address this topos put forth by the prosecution. Instead, they react to this topos by insisting that the defendants are, in fact, manly. The defense of their manhood comes out most prominently in the closing arguments.

Even before the closing, though, the defense intends to distance the defendants from their purported cowardice. In laying out their identity the defense states, "These defendants are not criminals; they are not robbers; they are not burglars; they are not common thieves; they descend to no small criminal act" (Kogan 36). They instead are "men of broad feelings of humanity" who aim to better society, however questionable their means may be. Here, the anarchists sound noble. They might support violence, but they are not common criminals, they are not cowards. The defense seems to agree with the prosecution that violence can be less despicable than cowardice.

No one calls the anarchists heroes directly but the prosecution insinuates that the defense aims to illustrate their heroism, as the defendants are men, "whom Black would have you surround and cover with garlands" (Kogan 53). We will discuss this function of this quotation further in the section but for now note that the defense praises the accused only as "idealistic humanitarians" at their best. More often, the defense directly disavows the merits of anarchism.

The defense's strategy does not rely on redefining whether or not cowardice is good, but who the cowards are. Confrontationally, they turn accusations of cowardice back onto the state, saying,

"this testimony was contradictory, and if false the State had introduced it to hang a poor teamster; it was more wicked and cowardly than the alleged conspiracy of the Socialists" (Lawson 229). This assertion comes off as incredibly speculative but the mere suggestion that the state could be conspiring against the defendants is remarkable. Ignoring the strangeness of attributing cowardice to a governmental body and not an individual… Supposedly the state is behaving shamefully and cowardly by confronting their enemies indirectly. Both sides seem to agree that to be violently confrontational is less terrible than to be cunning.

The Witness Gilmer

Recall that the debate over Gilmer's testimony ends up providing an opportunity for the prosecution to frame the case as an American veteran's word against the word of a foreigner. While this type of debate seems like it would doom the defense if viewed by jurors as valid, the defense actually throws the first proverbial punch in the argument. They call out Gilmer as a person in order to invalidate his testimony.

Now, the prosecution would not have had a case without Gilmer's testimony and the defense rapidly points out that fact. They insist that Gilmer's testimony is a hinge before disqualifying it and dismantling the narrative presented by the prosecution. They begin, "The proof in this case, *with the exception of Gilmer's testimony*, showed and shows only had a case within those sections which I have last read to you, and no other, if they have a case at all" (Lawson 126). After noting the importance of his testimony to the coherence of the prosecution's case they assert that, "We expect to show you further, gentlemen, that the witness Gilmer, who testified to having seen Spies light the match which caused the destruction coming from the bomb, *is a professional and constitutional liar*" (Lawson 129).

Rather than point out inconsistencies in his testimony, the defense opts to attack his integrity. While rhetors frequently make appeals to identity, this one brings up a weakness in the defense's position.

As we will see later on, the prosecution plays up the fact that Gilmer is an American soldier and the defendants, even those born in the US, are somehow foreign. If the question of Gilmer's testimony becomes a question of identity, then his identity as an American soldier renders him effectively impervious to impeachment. Thus, it surprised me that the defense actively brought in the issue of Gilmer's identity. They take a gamble, anticipating that jurors could see Gilmer as a liar before a soldier. The prosecution goes on to take advantage of this move.

The American Narrative

In recounting their version of American history the defense engaged in the tactic that we will see appear frequently in the later pardon issued by John Altgeld and other writings published amidst the controversy surrounding the trial in 1893. They moved to distance themselves from the defendants, reminding listeners that they do not defend them on the basis of commonalities with the defendants but rather common values they share with the American people. This distancing from anarchy and the anarchists themselves could be necessary to make sure that they appear firmly on the side of the law. This means that the defense must disavow the defendants' beliefs.

Mr. Foster, speaking on behalf of the defense team, says of the anarchists, "it were better they were in some other business than that of teaching Germans who come to this country to hate and detest our institutions, and commit any infraction of the law of the land" (Lawson 208). Simply put, they are not up to the most virtuous of business in his opinion. He further distances himself from the accused by espousing the popular anti-immigrant sentiment that "If this country is not good enough for foreigners, then those foreigners should return to their native land" (Lawson 208).

Perhaps this was his genuine belief—it seems to be a common one—but regardless he understands that in order to defend immigrants to Americans he must appear firmly on the side of "real Americans." The sort-of "go home" phrasing that we hear the prosecution echo was probably just as popular in 1886 as it is today. I imagine that it served to show that Mr. Foster was a normal guy and *not* an extremist. In agreement with the prosecution, he asserts that to disagree with the law is un-American. Of Parsons who was born in the US, he says "It is a shame that any man born under the Stars and Stripes should ever say that this country or its laws were not all, or by legal process might not be all, every man should desire" (Lawson 208). Thus he reasserts that he is not a radical and sees no need for radical reforms in the US. He makes this same point repeatedly in a single paragraph, repeating, "I have no patience with men who resort to force in violation of the law" (Lawson 208). And again, "I view this case as you do. I view it as an American citizen as you are Americans. I view it as a law-abiding citizen. I think I can look at the evidence and compare it with you from the standpoint- no defense for anarchy, no defense for communism, no defense for socialism" (Lawson 208). He insists that his allegiances lay more with the jurors than the radicals, "I am not a defender of anarchy. I am not a defender of violators of the law" (Lawson 208). He situates himself as firmly against Anarchy bus also, considering that he will not defend law-breakers and he is defending anarchists, he also sees anarchist beliefs as not inherently against the law (through anarchy is, in principle, against law). He seems to rely on the jurors' ignorance of the actual contents of anarchist philosophy.

In their retelling of American history, the defense puts forth a general patriotism. They uphold "American values" without explaining what exactly that entails. They depict the Revolutionary War as creating a unity that Americans share to this day as, "the blood of his

forefathers and of mine is embalmed in its red; the purity of the cause for which they fought is denoted by the white; the blue, the victory won, like the azure air that tips the hilltops of our woodlands or covers our Western prairies" (Lawson 208). This passage serves little purpose but to reinforce the defense's patriotism and reverence for the revolution. This recounting, rather than deal with specific values, serves merely to assert a generalized Americanism.

Soon after, also during the closing argument, Mr. Black speaks for the defense team and clarifies the contents of the American values that Mr. Foster recently espoused. Above all else, he emphasizes how the founders aimed to ensure that all people could speak freely. Speaking of the legal process to secure that right, "before the Constitution could receive the approbation of the States it was necessary that the amendment providing that no laws should be passed by Congress abridging free speech should be inserted" (Lawson 237). Soon after, he connects this fact to the case at hand, asserting that, "The Haymarket meeting was called for the common good. Those men believed that a great wrong had been done, a great outrage committed, and the rights of the citizens in that assemblage had been invaded by an unlawful, unwarrantable and outrageous act" (Lawson 237). More than the other men on the defense team, Mr. Black tries to assert the good intentions of the accused, as he does here by saying that they were motivated to act out against an unwarranted attack on the common man.

The Issue of Martyrdom

It seems like a tactical error for the defense to bring up any kind of martyrdom. Even laborers who may have been sympathetic to the anarchists' aims likely would not opt to venerate them. They were, as is the whole point of my exploration of their defense, highly unpopular people

among the general public. While the defendants themselves attempted to use the trial as a political platform to espouse their views, the defense was not attempting to elevate Anarchism, merely to win their case (Boudreau 79). Yet, the defense team brings up martyrdom before the prosecution has a chance to. This conundrum quickly resolves itself when we look at the words of the defense rather than the prosecution's report of their argument.

The defense argues that these men are not martyrs by their own virtue, but that they could become martyrs if subjected to a miscarriage of justice. The defense warns, "If you hang these men without justice, upon any other theory than that which is recognized as legal and proper; if you are carried away by your prejudices, if you are swayed by the prejudice of any man, by reason of the destruction of their lives by that means and for that reason, they become martyrs" (Lawson 220). If a just court ruling finds the defendants guilty, then they would not be martyrs. It is not that their cause is worthy, but instead, our cause as Americans attempting to uphold the values of our nation is worthy. If our values fail us, then those who die as a consequence are martyrs.

Rather than praising the defendants, the defense implores jurors *not* to make martyrs of the anarchists by sentencing them unjustly. The defense reminds jurors, "whenever a man asserts a principle, and, without the justification of the law, by reason of that principle he is cut down, he is a martyr to the cause, and the cause is assisted by his martyrdom" (Lawson 220). The anarchist ideology will gain attention and justification if the defendants are hung unjustly. Thus, by this line of thinking, to find the accused not guilty could actually further anarchism. This would be especially true considering that there were already apparent faults with the trial proceedings, as you will see in my later discussion of John Altgeld's pardon.

I imagine that the prosecution's response, discussed in an earlier section, was an intentional mischaracterization of the defense's argument here. While the defense issued a warning to jurors not to render an unfounded decision and inadvertently render anarchists martyrs, the prosecution claimed that the defense *wanted* to make them martyrs and saw them as deserving of such a fate. This seems incoherent considering the defense team's obvious aim to prevent their clients from being hung at all.

Both sides play into the narrative in which the decision of the jurors will make someone a martyr. Though their assertion was most certainly mischaracterized, the defense does not depart from the prosecution's suggestion that a vote of guilty or innocent could be, effectively, a vote for who people ought to venerate.

CONCLUSION

Having examined patterns in the arguments presented both for and against the accused we must return to the questions that prompted this exploration: How do you argue on behalf of people the audience thinks are terrorists?

All of the rhetors that I examined employ both legal and ideological arguments, but they combine these types of arguments differently. From my observations, governor Altgeld produces more legal arguments, the prosecution puts forth more ideological arguments, and the defense integrates these two kinds of arguments, struggling to address both the legal and ideological issues of the case.

The prosecution stands to gain from making ideological arguments since emphasizing the existing ideological divide reinforces their case. Making the stasis of the trial a matter of identity disfavors people like the accused whose identity differs from the mainstream. Consequently, the defense will lose out on most ideological questions and would probably be more persuasive if they put forth a legally based argument. So why does the defense deal with ideological questions at all? The answer to this question offers much insight into a possible answer to my larger question.

In order to convince jurors to entertain the possibility of the jurors' innocence, the defense team must posit the importance of refusing to make judgments based on ideological concerns alone and yet to forgo ideological questions would leave their argument entirely disconnected from the jurors who are, in fact, emotionally connected to the case.

Even if a person wants to argue a point of law, they are often interrupted by the need to foster some common identity with their audience. Outward patriotism is a prerequisite to having one's argument heard in America. Even if one argues the technical matter well, he still may not

convince the audience if he is perceived to be unpatriotic. This difficulty garners greater significance considering that post-war circumstances compound the need to identify with the audience.

The defense likely recognizes this imperative and attempts to get jurors to identify with the defense team in shared opposition to the anarchists. The defense attorneys, as well as most who speak out in defense of the anarchists, engage in an odd effort to dissociate themselves from the defendants. They structure their defense not on the merits of anarchism but based on their version of American ideals. In this way, the defense engages with jurors ideologically without approving of the anarchists. The defense constructs a system of shared American values in which the anarchists do hold reprehensible beliefs but are not guilty of any crime and thus should not be convicted solely on the basis of their beliefs. This understanding must precede any legal argument since, for such arguments to matter, jurors must believe in the legal system and grant the accused the presumption of innocence.

The defense's seemingly disorganized case likely comes about as the result of an attempt to meet these demanding and sometimes conflicting requirements. The defense needs to advocate the rule of a system of plain law that treats people the same regardless of who they are but they also needed to connect their argument to jurors as people who do care about the identities of those involved. The attorneys do make ideological arguments but the ideology that they put forth, if carried out in earnest, would require them to reject identity-based arguments or motivism that detract from the legal arguments that their version of Americans supposedly respects. The defense fails to condemn motivism, puts forth identity-based arguments and creates incoherencies within their own argument.

Even when the defense attempts to argue the technical matter strategically, attacking the key witness, they bring in ideological issues that undermine their attempt to appear ideologically disconnected to the ongoing conflict in Chicago. By bringing in Gilmer's character and criticizing him on the basis of his person rather than the coherency of his testimony, the defense implicitly admits that identity matters. This admission, while perhaps necessary, confuses their other points. In attempting to navigate the complex rhetorical constraints surrounding them, the defense ended up doubling back on itself.

Altgeld wrote the justification for his pardon under similar rhetorical constraints except he did not have to prove his point in the short term to anyone directly affected by the outcome of the trial. For this reason, he could assert an Americanism similar to that put forth by the defense and was not forced into muddling his point with attempts to appeal to a jury for whom ideology mattered. Altgeld probably took the clearest course: make the best legal case, and trust that future generations will forget the historical constraints that would have made the political argument so persuasive in its day. In another sense, avoid a jury if possible because one cannot convince jurors in such circumstances with entirely apolitical arguments.

While Altgeld managed to stay out of the political realm, even he could not avoid the ideological entirely. Nearly all of the rhetors that I examine, including Altgeld, implicitly agree that without expressing patriotism one cannot expect to be heard out by Americans. Some might say that this is obvious— that one must show allegiance to the nation whose laws judge you in order to receive protection under their laws. The founding fathers never put forth that those with foreign ties did not deserve a fair trial in America. To the contrary, they put specific measures in place in order to legally protect those accused of crimes who are perceived to be un-American. Andrew Napolitano argues

that “the founders felt compelled to make another advance in codifying the rights of even the most hated criminals: Spies and traitors. Thus, they grafted into the Constitution a restrictive and exclusive definition of the crime of treason and enumerated protections for those within its ambit…”(Napolitano 27) Treason, at the time, was more broadly defined than it is today and would have encompassed crimes such as the bombing on Haymarket Square that we would call terrorism today. The criteria for punishment was made to be specific while the scope of people protected remained broad.

While today “people are often misled to believe that the only way to protect the homeland is by acquiescing, by placing our freedoms at the feet of our protectors” (Napolitano xvii). our constitution actually affords those who attack our nation more careful protection under the law. It reads, “No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same Act, or on Confession in open Court” (US Const.). The constitution mentions few specific crimes but goes through the trouble of granting specific proceedings related to treason. Furthermore, the first amendment to the Constitution asserts that "Congress shall make no law … abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances” (US Const.). While the intentions of the founders remain unclear regarding many issues, the treatment of those who openly believe that our way of life is wrong cannot be considered one such issue. They made unique laws to ensure that people could freely express dissent *even* “at the expense of national security prerogatives of the government” (Napolitano 28). While Napolitano rejects the idea that we have to trade off rights for increased security, he would further argue that the Constitution expressly prohibits that trade-off.

Clearly, the founders did not intend for people to have to prove their allegiance to America in order to gain the privilege of presumed innocence until proven otherwise. Yet, effectively, that is what seems to happen. The defense and Governor Altgeld, in their attempts to prove that the anarchists were not proven guilty of murder, believed that they needed to assert their patriotism and lack of extremism in order to convince listeners that those for whom they spoke could be innocent.

Maybe this is just smart rhetoric or maybe this indicates a flaw in our legal system. In support of the "smart rhetoric" idea, George Cheney, an expert in the phenomena of identification, explains that, "an individual who is inclined to identify with an organization will be open to persuasive efforts from various sources within that unit" (Cheney 146). In other words, someone who sees the rhetor as part of their group will be inclined to view their argument as more persuasive. Not only that, but listeners are more likely to act alongside someone they understand to be like themselves. "Consubstantiability represents an area of 'overlap'— either real or perceived— between two individuals or between an individual and a group; it is a basis for common motives and for 'acting together.'" (Cheney 146) Considering that Cheney has found a solid basis for this theory, we can assume that perceived commonalities lead to collective action.

The "flaw in our legal system" hypothesis comes to mind upon considering the first amendment rights established along with our nation. It is expressly *not* against the law to express all kinds of personal and political beliefs, however unpopular, so it follows that someone should not have to display a conformity to normative values in order to be viewed as plausibly innocent in court. The reality of trials could be yet another instance in which our nation has failed to secure us the rights it has promised. If we agree with the assertion that, "the federal government has never taken seriously the concept of natural rights, all while paying lip service to that first principle"

(Napolitano xxvi). Perhaps the bill of rights and the constitution represent ideals that our legal system cannot reflect in reality.

Ultimately, the drive to achieve some form of identification occurs because of both smart rhetoric and a flaw in our legal system since, in order to grant fair trials to the most unpopular among us our courts must somehow account for the fact that it is incredibly challenging, if not impossible, to make a persuasive argument so long as you are perceived as an outsider. "When you are with Athenians, it's easy to praise Athenians, but not when you are with Lacedaemonians" (Cheney 146). Historically, it has been difficult to grant "dangerous foreigners" the presumption of innocence to which they are entitled. This reality should be considered in any effort to create a more just legal system.

My conclusion hardly sounds striking— I know. We all probably believe that the law remains imperfect today as it was a century ago. Yet both then and today there remain those who have insisted "all law is common sense." To which Ames responds, "and all a man publishes in a newspaper is enough for the condemnation of a number of other men for murder, because they belonged to the same club with the editor. Is that the perfection of reason?" (Ames 7) This criticism, offered in 1893, remains similar to that which I sustain up until now. All too often law has masqueraded as pure reason, preventing a careful assessment of how it works. The denial of the rhetoric surrounding law because of its supposed purity impedes a thoughtful analysis of the actual mechanisms at play in convincing a jury.

Acknowledging the subjectivity of our legal system does not mean that we must do away with it entirely. To echo the words of many I have cited here, "I am not an anarchist." A criticism of the law need not equate a desire to dismantle it but instead, as in my case, it can come to be from a

desire to improve it. As Sarat suggests, "It may be that analysis of law's rhetoric is more than aesthetic self-indulgence, but rather is a part and parcel of a political and ethical project is the transformation of law in the name of a justice all too rarely spoken about in the profession of law" (Sarat 3).

Bearing that in mind, I hope that you understood my essay to be more than a mere self-indulgence. While I cannot propose a specific course of action, I hope that, if nothing else, you can see the potential for rhetorical examinations to reveal possible injustices within the legal system to suggest answer questions like "How do you get people to care about the rights of defendants they are afraid of?" even if you cannot say the answer for certain. I imagine that those of you who have made it this far probably agreed with me anyway!

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